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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RON RAMOS, individually and on ) Case No. '16CV2623 GPC NLS  
 behalf of all others similarly situated, )  
 ) **CLASS ACTION**

Plaintiff, ) **COMPLAINT FOR VIOLATIONS**  
 ) **OF:**

VS.

SPARK MARKETING AND RESEARCH, INC., AKA SPARKCALLCENTER.COM, JONATHAN ADLER, ADLER ENTERPRISES, and DOES 1 through 10, inclusive, and each of them,

Defendant.

1. NEGLIGENT VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(c)]

## DEMAND FOR JURY TRIAL

## CLASS ACTION COMPLAINT

1 Plaintiff RON RAMOS (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, alleges the following upon information and belief based upon  
3 personal knowledge:

#### 4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of SPARK MARKETING AND  
8 RESEARCH, INC., AKA SPARKCALLCENTER.COM, JONATHAN ADLER,  
9 ADLER ENTERPRISES (“Defendants”), in negligently, knowingly, and/or  
10 willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the  
11 Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related  
12 regulations, specifically the National Do-Not-Call provisions, thereby invading  
13 Plaintiff’s privacy.

#### 14 **JURISDICTION & VENUE**

15 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
16 a resident of California, seeks relief on behalf of a Class, which will result in at  
17 least one class member belonging to a different state than that of Defendant, a  
18 foreign company with significant California contacts, namely Defendant’s U.S.  
19 partner, JONATHAN ADLER/ADLER ENTERPRISES. Plaintiff also seeks up to  
20 \$1,500.00 in damages for each call in violation of the TCPA, which, when  
21 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00  
22 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and  
23 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are  
24 present, and this Court has jurisdiction.

25 3. Venue is proper in the United States District Court for the Southern  
26 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)  
27 because Defendant does business within the State of California and Plaintiff resides  
28 within the County of San Diego.

**PARTIES**

4. Plaintiff RON RAMOS (“Plaintiff”), is a natural person residing in San Marcos, California and is a “person” as defined by 47 U.S.C. § 153 (39).

5. Defendant SPARK MARKETING AND RESEARCH, INC., AKA SPARKCALLCENTER.COM is a marketing and research company, and is a “person” as defined by 47 U.S.C. § 153 (39).

6. Defendant JONATHAN ADLER is the primary officer of ADLER ENTERPRISES and in the business of marketing and research, and is a “person” as defined by 47 U.S.C. § 153(39). Furthermore, Defendant JONATHAN ADLER is Defendant SPARK MARKETING AND RESEARCH, INC., AKA SPARKCALLCENTER.COM’s partner.

7. Defendant ADLER ENTERPRISES is in the business of marketing and research, and is a “person” as defined by 47 U.S.C. § 153(39). Furthermore, Defendant ADLER ENTERPRISES is Defendant SPARK MARKETING AND RESEARCH, INC., AKA SPARKCALLCENTER.COM’s partner.

8. The above named Defendant, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

9. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained

of herein was made known to, and ratified by, each of the other Defendants.

### **FACTUAL ALLEGATIONS**

10. Beginning in or around February 2016, Defendants contacted Plaintiff on Plaintiff's cellular telephone number ending in -1554, in an attempt to solicit Plaintiff to purchase Defendants' services.

11. Defendants used an "automatic telephone dialing system" as defined by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

12. Defendants contacted or attempted to contact Plaintiff from telephone number (415) 550-6970 at least once on or around February 3, 2016 and at least once on March 9, 2016.

13. Defendants' calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

14. Defendants' calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

15. During all relevant times, Defendants did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

16. Further, Plaintiff's cellular telephone number ending in -1554 was added to the National Do-Not-Call Registry on or about December 16, 2004.

17. Despite this, Defendants continued to call Plaintiff in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA.

18. Defendants placed multiple calls soliciting its business to Plaintiff on his cellular telephone ending in -1554 beginning in or around July 2016.

19. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.



1 any twelve-month period, within four years prior to the  
2 filing of the complaint.

3 24. Plaintiff represents, and is a member of, The ATDS Class, consisting  
4 of all persons within the United States who received any collection telephone calls  
5 from Defendant to said person's cellular telephone made through the use of any  
6 automatic telephone dialing system or an artificial or prerecorded voice and such  
7 person had not previously not provided their cellular telephone number to  
8 Defendant within the four years prior to the filing of this Complaint.

9 25. Plaintiff represents, and is a member of, The DNC Class, consisting  
10 of all persons within the United States registered on the National Do-Not-Call  
11 Registry for at least 30 days, who had not granted Defendant prior express consent  
12 nor had a prior established business relationship, who received more than one call  
13 made by or on behalf of Defendant that promoted Defendant's products or services,  
14 within any twelve-month period, within four years prior to the filing of the  
15 complaint.

16 26. Defendant, its employees and agents are excluded from The Classes.  
17 Plaintiff does not know the number of members in The Classes, but believes the  
18 Classes members number in the thousands, if not more. Thus, this matter should  
19 be certified as a Class Action to assist in the expeditious litigation of the matter.

20 27. The Classes are so numerous that the individual joinder of all of its  
21 members is impractical. While the exact number and identities of The Classes  
22 members are unknown to Plaintiff at this time and can only be ascertained through  
23 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
24 The Classes includes thousands of members. Plaintiff alleges that The Classes  
25 members may be ascertained by the records maintained by Defendant.

26 28. Plaintiff and members of The ATDS Class were harmed by the acts of  
27 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
28 and ATDS Class members via their cellular telephones thereby causing Plaintiff

1 and ATDS Class members to incur certain charges or reduced telephone time for  
2 which Plaintiff and ATDS Class members had previously paid by having to retrieve  
3 or administer messages left by Defendant during those illegal calls, and invading  
4 the privacy of said Plaintiff and ATDS Class members.

5 29. Common questions of fact and law exist as to all members of The  
6 ATDS Class which predominate over any questions affecting only individual  
7 members of The ATDS Class. These common legal and factual questions, which  
8 do not vary between ATDS Class members, and which may be determined without  
9 reference to the individual circumstances of any ATDS Class members, include,  
10 but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this  
12 Complaint, Defendant made any telemarketing/solicitation call  
13 (other than a call made for emergency purposes or made with  
14 the prior express consent of the called party) to a ATDS Class  
15 member using any automatic telephone dialing system or any  
16 artificial or prerecorded voice to any telephone number  
17 assigned to a cellular telephone service;
- 18 b. Whether Plaintiff and the ATDS Class members were damaged  
19 thereby, and the extent of damages for such violation; and
- 20 c. Whether Defendant should be enjoined from engaging in such  
21 conduct in the future.

22 30. As a person that received numerous telemarketing/solicitation calls  
23 from Defendant using an automatic telephone dialing system or an artificial or  
24 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
25 claims that are typical of The ATDS Class.

26 31. Plaintiff and members of The DNC Class were harmed by the acts of  
27 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
28 and DNC Class members via their telephones for solicitation purposes, thereby



1 invading the privacy of said Plaintiff and the DNC Class members whose telephone  
2 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class  
3 members were damaged thereby.

4 32. Common questions of fact and law exist as to all members of The  
5 DNC Class which predominate over any questions affecting only individual  
6 members of The DNC Class. These common legal and factual questions, which do  
7 not vary between DNC Class members, and which may be determined without  
8 reference to the individual circumstances of any DNC Class members, include, but  
9 are not limited to, the following:

- 10 a. Whether, within the four years prior to the filing of this  
11 Complaint, Defendant or its agents placed more than one  
12 solicitation call to the members of the DNC Class whose  
13 telephone numbers were on the National Do-Not-Call Registry  
14 and who had not granted prior express consent to Defendant and  
15 did not have an established business relationship with  
16 Defendant;
- 17 b. Whether Defendant obtained prior express written consent to  
18 place solicitation calls to Plaintiff or the DNC Class members'  
19 telephones;
- 20 c. Whether Plaintiff and the DNC Class member were damaged  
21 thereby, and the extent of damages for such violation; and
- 22 d. Whether Defendant and its agents should be enjoined from  
23 engaging in such conduct in the future.

24 33. As a person that received numerous solicitation calls from Defendant  
25 within a 12-month period, who had not granted Defendant prior express consent  
26 and did not have an established business relationship with Defendant, Plaintiff is  
27 asserting claims that are typical of the DNC Class.

28 34. Plaintiff will fairly and adequately protect the interests of the members



1 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
2 class actions.

3 35. A class action is superior to other available methods of fair and  
4 efficient adjudication of this controversy, since individual litigation of the claims  
5 of all Classes members is impracticable. Even if every Classes member could  
6 afford individual litigation, the court system could not. It would be unduly  
7 burdensome to the courts in which individual litigation of numerous issues would  
8 proceed. Individualized litigation would also present the potential for varying,  
9 inconsistent, or contradictory judgments and would magnify the delay and expense  
10 to all parties and to the court system resulting from multiple trials of the same  
11 complex factual issues. By contrast, the conduct of this action as a class action  
12 presents fewer management difficulties, conserves the resources of the parties and  
13 of the court system, and protects the rights of each Classes member.

14 36. The prosecution of separate actions by individual Classes members  
15 would create a risk of adjudications with respect to them that would, as a practical  
16 matter, be dispositive of the interests of the other Classes members not parties to  
17 such adjudications or that would substantially impair or impede the ability of such  
18 non-party Class members to protect their interests.

19 37. Defendant has acted or refused to act in respects generally applicable  
20 to The Classes, thereby making appropriate final and injunctive relief with regard  
21 to the members of the Classes as a whole.

## 22 **FIRST CAUSE OF ACTION**

### 23 **Negligent Violations of the Telephone Consumer Protection Act**

#### 24 **47 U.S.C. §227(b).**

#### 25 **On Behalf of the ATDS Class**

26 38. Plaintiff repeats and incorporates by reference into this cause of action  
27 the allegations set forth above at Paragraphs 1-35.

28 39. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple negligent violations of the TCPA, including but not limited to each  
 2 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular  
 3 *47 U.S.C. § 227 (b)(1)(A)*.

4 40. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,  
 5 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory  
 6 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

7 41. Plaintiff and the ATDS Class and ATDS Revocation Class members  
 8 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## 9 10 **SECOND CAUSE OF ACTION**

### 11 **Knowing and/or Willful Violations of the Telephone Consumer Protection** 12 **Act**

#### 13 **47 U.S.C. §227(b)**

#### 14 **On Behalf of the ATDS Class**

15 42. Plaintiff repeats and incorporates by reference into this cause of action  
 16 the allegations set forth above at Paragraphs 1-39.

17 43. The foregoing acts and omissions of Defendant constitute numerous  
 18 and multiple knowing and/or willful violations of the TCPA, including but not  
 19 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,  
 20 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

21 44. As a result of Defendant's knowing and/or willful violations of *47*  
 22 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of  
 23 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
 24 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

25 45. Plaintiff and the Class members are also entitled to and seek injunctive  
 26 relief prohibiting such conduct in the future.

## 27 **THIRD CAUSE OF ACTION**

### 28 **Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

**On Behalf of the DNC Class**

46. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-43.

47. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

48. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

49. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**FOURTH CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

**On Behalf of the DNC Class**

50. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-47.

51. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

52. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

53. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

**THIRD CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation,

pursuant to 47 U.S.C. 227(c)(5).

- Any and all other relief that the Court deems just and proper.

#### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

##### **47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

54. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 21st Day of October, 2016.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff